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American Postal Workers Union Local 83 (United States Postal Service) and KATHLEEN LUCIEN. Case 15–CB–223251 and 15–CB–232568

June 16, 2020

DECISION AND ORDER

BY CHAIRMAN RING¹ AND MEMBERS KAPLAN AND EMANUEL

The General Counsel seeks a partial default judgment in this case on the ground that the Respondent has failed to file an answer to the consolidated complaint. Upon charges filed by Kathleen Lucien on July 5, 2018, the Regional Director issued a complaint and notice of hearing (the original complaint) on October 29, 2018, against American Postal Workers Union Local 83 (the Respondent), alleging that it has violated Section 8(b)(1)(A) of the Act and within the meaning of the Postal Reorganization Act (PRA). The Respondent filed answers on December 1 and 6, 2018, admitting some allegations and denying others. Subsequently, on March 25, 2019, and upon charges filed by Lucien on December 11, 2018, the Regional Director issued an Order consolidating cases, consolidated complaint, and notice of hearing (the consolidated complaint), incorporating the allegations from the original complaint and adding others. Although properly served copies of the charge and the consolidated complaint, the Respondent failed to file an answer.

On May 22, 2019, the General Counsel filed with the National Labor Relations Board a Motion for Partial Default Judgment, limiting its request to the new factual allegation contained in paragraph 7(b) of the consolidated complaint: “Since on or about October 14, 2018, Respondent has refused to provide, [sic] Lucien copies of grievances that were filed by or on behalf of Lucien, [sic] between July 1, 2018 and November 30, 2018.” On May 24, 2019, the Board issued an Order transferring proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response.

¹ Chairman Ring, who is recused, is a member of the panel but did not participate in this decision on the merits.

In *New Process Steel v. NLRB*, 560 U.S. 674 (2010), the Supreme Court left undisturbed the Board’s practice of deciding cases with a two-member quorum when one of the panel members has recused himself. Under the Court’s reading of the Act, “the group quorum provision [of Sec. 3(b)] still operates to allow any panel to issue a decision by only two members if one member is disqualified.” *New Process Steel*, 560 U.S. at 688. See also, e.g., *D.R. Horton*, 357 NLRB 2277, 2277 fn. 1

Accordingly, the allegations set forth in the motion are undisputed.

Ruling on Motion for Partial Default Judgment

Section 102.20 of the Board’s Rules and Regulations provides that the allegations in a complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the consolidated complaint affirmatively states that unless an answer is received on or before April 8, 2019, the Board may find, pursuant to a motion for default judgment, that the allegations in the consolidated complaint are true. Further, the undisputed allegations in the General Counsel’s motion disclose that the Region, by letter dated April 18, 2019, notified the Respondent that unless an answer was received by April 25, 2019, a motion for default judgment would be filed. No answer or request for an extension of time to file an answer was received by that date.²

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel’s Motion for Partial Default Judgment.

On the entire record, the Board makes the following

FINDING OF FACT

Consistent with the allegation in the consolidated complaint, which has effectively been admitted by the Respondent’s failure to file an answer, we find that since about October 14, 2018, the Respondent has refused to provide Lucien copies of grievances that were filed by or on behalf of Lucien between July 1 and November 30, 2018.

ORDER

IT IS ORDERED that the General Counsel’s Motion for Partial Default Judgment is granted with respect to the allegation set forth in paragraph 7(b) of the consolidated complaint.

IT IS FURTHER ORDERED that this proceeding is remanded to the Regional Director for Region 15 for further appropriate action consistent with the Decision and Order.

Dated, Washington, D.C. June 16, 2020

Marvin E. Kaplan,

Member

(2012), enfd. in relevant part, 737 F.3d 344, 353 (5th Cir. 2013); *NLRB v. New Vista Nursing & Rehabilitation*, 870 F.3d 113, 127–128 (3d Cir. 2017); *1621 Route 22 West Operating Co.*, 357 NLRB 1866, 1866 fn. 1 (2011), enfd. 725 Fed. Appx. 129, 136 fn. 7 (3d Cir. 2018).

² Although tracking information indicates that the Region’s letter was not picked up at the Post Office until May 3, 2019, there is no record the Respondent contacted the Region either before or after that date to respond or request an extension.

William J. Emanuel

Member

(SEAL)

NATIONAL LABOR RELATIONS BOARD